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14 Third Party Plaintiffs PCJV USA, LLC, PCI  
15 TRADING LLC, POTATO CORNER, LA  
16 GROUP, LLC, GK CAPITAL GROUP, LLC,  
17 NKM CAPITAL GROUP, LLC and GUY  
18 KOREN, and Defendants J & K AMERICANA,  
19 LLC, J&K LAKEWOOD, LLC, J&K  
20 OAKRIDGE, LLC, J&K VALLEY FAIR, LLC, J  
21 & K ONTARIO, LLC, J&K PC TRUCKS, LLC,  
22 HLK MILPITAS, LLC, and GK CERRITOS, LLC

13  
14 **UNITED STATES DISTRICT COURT**  
15  
16 **CENTRAL DISTRICT OF CALIFORNIA**

17  
18 SHAKEY'S PIZZA ASIA VENTURES,  
19 INC, a Philippines corporation,

20 Plaintiff,

21 vs.

22 PCJV USA, LLC, a Delaware limited  
23 liability company; PCI TRADING , LLC, a  
24 Delaware limited liability company; GUY  
25 KOREN, an individual; POTATO CORNER  
26 LA GROUP, LLC, a California limited  
27 liability company; NKM CAPITAL GROUP,  
28 LLC, a California limited liability company;  
J & K AMERICANA, LLC, a California  
limited liability company; J&K  
LAKEWOOD, LLC, a California limited  
liability company; J&K VALLEY FAIR,  
LLC, a California limited liability company;  
J & K ONTARIO, LLC, a California limited  
liability company; HLK MILPITAS, LLC, a  
California, limited liability company; GK  
CERRITOS, LLC, a California, limited  
liability company; J&K PC TRUCKS, LLC,  
a California limited liability company; and,  
GK CAPITAL GROUP, LLC, a California

Case No. 2:24-CV-04546-SB(AGRx)

*Hon. Stanley Blumenfeld, Jr.*

**THE PCJV USA PARTIES'  
SUBMISSION RE: ASSIGNMENT  
IN GROSS AND WAIVER**

Complaint Filed: May 31, 2024  
Trial Date: August 19, 2025

1 limited liability company and DOES 1  
2 through 100, inclusive,

3 Defendants.

4 PCJV USA, LLC, a Delaware limited  
5 liability company; PCI TRADING LLC, a  
6 Delaware limited liability company;  
7 POTATO CORNER LA GROUP LLC, a  
8 California limited liability company; GK  
9 CAPITAL GROUP, LLC, a California  
10 limited liability company; NKM CAPITAL  
11 GROUP LLC, a California limited liability  
12 company; and GUY KOREN, an individual,

13 Counter-Claimants,

14 v.

15 SHAKEY'S PIZZA ASIA VENTURES,  
16 INC, a Philippines corporation,

17 Counter Defendant.

18 PCJV USA, LLC, a Delaware limited  
19 liability company; PCI TRADING LLC, a  
20 Delaware limited liability company;  
21 POTATO CORNER LA GROUP LLC, a  
22 California limited liability company; GK  
23 CAPITAL GROUP, LLC, a California  
24 limited liability company; NKM CAPITAL  
25 GROUP LLC, a California limited liability  
company; and GUY KOREN, an individual,

26 Third Party Plaintiffs,

27 v.

28 PC INTERNATIONAL PTE LTD., a  
29 Singapore business entity; SPAVI  
30 INTERNATIONAL USA, INC., a California  
31 corporation; CINCO CORPORATION, a  
32 Philippines corporation; and ROES 1 through  
33 10, inclusive,

34 Third Party Defendants.

1 **I. INTRODUCTION**

2 As a threshold matter, the PCJV USA Parties submit that questions  
3 concerning assignment in gross and waiver largely stem from SPAVI's position that  
4 in 2022, it assumed no express or implied contractual or fiduciary obligations to the  
5 PCJV USA Parties and obtained no right to control the subject trademarks through  
6 PCJV's management board and executive officers. Having advanced that  
7 contention, SPAVI is now judicially estopped from disavowing it, and at the trial of  
8 this action, the following questions must be resolved:

9 i. Whether the 2022 transaction between Cinco and SPAVI effected a valid  
10 transfer of the U.S. Potato Corner trademarks or, instead, was an invalid  
11 assignment in gross that severed the marks from the goodwill PCJV and its  
12 related businesses created and owns; and  
13 ii. Whether Cinco and SPAVI waived their ability to enforce any purported  
14 U.S. trademark or trade-secret rights against the PCJV USA Parties by over  
15 a decade-long course of conduct, repeated affirmations of PCJV's franchise  
16 authority, and SPAVI's post-acquisition inaction and disavowals.

17 The evidence summarized below—testimony, contracts, board minutes,  
18 settlement documents, and uncontested regulatory filings—is compelling: (a) at  
19 best, Cinco transferred nothing more than naked registrations to SPAVI, rendering  
20 the assignment void, and (b) both Cinco and SPAVI intentionally relinquished any  
21 right to challenge PCJV's use of the U.S. Potato Corner brand.

22 **II. ASSIGNMENT IN GROSS**

23 **A. Applicable Standard and Burdens of Proof**

24 Under 15 U.S.C. § 1060 and controlling Ninth Circuit authority, a trademark  
25 may be assigned only together with the goodwill of the business in which the mark  
26 is used. *Glow Indus., Inc. v. Lopez*, 273 F. Supp. 2d 1095, 1107 (C.D. Cal. 2003)  
27 (citing 15 U.S.C. § 1060); *E. & J. Gallo Winery v. Gallo Cattle Co.*, 967 F.2d 1280,  
28 1289 (9th Cir.1992) A transfer of the registration alone—divorced from the

1 business, its customers, and its attendant obligations—constitutes an assignment in  
2 gross and extinguishes enforceable rights in the mark. *Id.*

3 Both sides bear a burden of proof in connection with proving or disproving  
4 the alleged transfer of goodwill from Cinco to SPAVI in March 2022. In addition to  
5 proving that Cinco owned the goodwill via a registration, which the PCJV USA  
6 Parties could rebut both under *Sengoku* and by proof of a naked license, SPAVI has  
7 to prove that Cinco, in fact, transferred the goodwill to SPAVI in 2022 without  
8 SPAVI assuming the associated burdens.

9 Before the question of an impermissible assignment in gross arises, SPAVI  
10 must first establish a *prima facie* showing that Cinco conveyed the goodwill  
11 embodied in the trademarks. SPAVI cannot bear this burden. *See Federal Treasury*  
12 *Enterprise Sojuzplodoimport v. Spirits Intern. N.V.*, 623 F.3d 61, 68 (2d Cir. 2010);  
13 *Glow Industries, Inc.*, 273 F. Supp. 2d at 1108; *Hallmark Hardwoods, Inv. V. Omni*  
14 *Wood Product, LLC*, 2011 WL 13176098, \*15 (C.D. Cal. 2011); *In re Impact*  
15 *Distributors, Inc.*, 260 B.R. 48, 53-55 (S.D. Fla. 2001); *Money Store v. Harriscorp*  
16 *Fin., Inc.*, 689 F.2d 666, 670 (7th Cir. 1982).

17 **B. The Goodwill at Issue is the Potato Corner USA Franchise System**

18 Cinco’s registrations (Trial Exh. Nos. 1, 3, 5) cover “restaurant and catering  
19 services.” Consequently, all goodwill embodied in those marks resides exclusively  
20 in the U.S. quick-service restaurants created by the PCJV USA Parties.

21 In PCJV’s LLC Agreement (Trial Exh. No. 1051) executed August 8, 2012,  
22 Cinco Group agreed that it had “granted” and “vested” (past tense) all U.S. branding  
23 in the PCJV partnership and all quality-control functions in PCJV’s President,  
24 management, and executive officers. The Joint Venture Agreement evidences Cinco  
25 Group’s primary contribution: the grant of a “master license” (which means an  
26 exclusive grant of rights to use the marks in the United States and Israel) in  
27 exchange for 60% ownership of PCJV; the LA Group’s consideration was to create  
28 and grow the U.S. business in exchange for a 40% interest in PCJV.

1 Notwithstanding the 60/40 split, each group remained an *equal* participant in  
2 the use of the exclusively granted/vested trademarks, solely under which trademarks  
3 franchisees and licensees were required to pay franchise and royalty fees to PCJV.  
4 That agreement required each group to collect an equal amount, *i.e.*, 30%, of all  
5 franchise and royalty fees paid to PCJV. As discussed below, both sides agreed to a  
6 0/0% split instead in favor of growth and future distributions from PCJV. They not  
7 only expressed this intent in an October 16, 2012 meeting minutes, but they also  
8 expressed that intent through annual audits, approved by both groups and signed  
9 under penalty of perjury.

10 The 2018 FDDs, for example, contain the note:

11 *The Company has a contractual obligation to remit 30% of all initial  
12 franchise fees and continuing royalty fees collected to certain members who  
13 own approximately 40% of the Company and provide management services  
14 on behalf of the Company. Additionally, the Company has a contractual  
15 obligation to remit 30%, as licensing fees, of all initial franchise fees and  
16 continuing royalty fees collected to certain members who own approximately  
17 60% of the Company. Both obligations have been waived by the respective  
18 parties for the years ended December 31, 2017, 2016 and 2015.*

19 In exchange for granted and vested trademark rights to control the U.S. Potato  
20 Corner brand pursuant to the terms and conditions of their partnership agreements  
21 (pre-license agreement), PCJV, not Cinco: (a) designed the U.S. store prototype, (b)  
22 authored the U.S. operations and training manuals, (c) developed U.S.-specific  
23 menus, (d) marketed under the d/b/a “Potato Corner USA,” and (e) fielded any  
24 consumer complaints. U.S. consumers consistently associated the brand with PCJV,  
25 directing praise and complaints to PCJV—not to Cinco (or SPAVI).

26 **C. The 2022 Transfer was a Naked Assignment**

27 It is certainly plausible that the trier of fact could find that Cinco held the  
28 goodwill associated with the trademarks in 2022 by virtue of having and exercising

1 adequate control over the trademarks through its representation on PCJV’s  
2 management and executive officers. It also is plausible that the trier of fact could  
3 find that PCJV held the goodwill.

4 The purported Deeds of Assignment recorded at the USPTO (Trial Exh. Nos.  
5 4, 6) transferred only Cinco’s “right, title, and interest it now has” in the  
6 registrations. *See* J. Thomas McCarthy, *McCarthy on Trademarks and Unfair*  
7 *Competition*, § 18:15 (5th ed.) (“It is elementary ancient law that an assignee never  
8 stands in any better position than his assignor,’ and thus once an assignee has notice  
9 of an injunction against the assignor, it is bound to comply.”) (citation omitted).  
10 SPAVI here has disavowed acquiring (i) PCJV membership interests, (ii) franchise  
11 agreements, (iii) supply-chain contracts, (iv) franchisee relationships, (v) regulatory  
12 obligations, or (vi) any other obligations in PCJV or any related business. It likewise  
13 has refused to assume other contractual or fiduciary duties, all of which the trier of  
14 fact could find was essential for Cinco to be the senior user under *Sengoku* and to  
15 have properly maintained the trademarks at the USPTO.

16 Three days before SPAVI sued, the entire family of Cinco and Cinco-  
17 connected individuals and entities entered a Settlement Agreement and Membership  
18 Interest Purchase Agreement (“MIPA”) assigning all of their interests in PCJV and  
19 its related businesses—including “all rights attached thereto”—to Koren-controlled  
20 entities, confirming that the goodwill embodied in the Potato Corner USA franchise  
21 business was passing to PCJV, and was not previously transferred to SPAVI.

22 The PCJV USA Parties firmly believe that because the 2022 deeds severed  
23 the registrations from the franchised business that created their goodwill, the  
24 transfer is void. SPAVI, thus, could not have acquired enforceable U.S. trademark  
25 rights, and any subsequent enforcement attempt is barred.

26 Oral and documentary evidence will establish that the goodwill symbolized  
27 by the Potato Corner brand in the United States was associated with PCJV’s Potato  
28 Corner USA’s franchised restaurants:

1       1. Cinco registered the U.S. Potato Corner trademarks for “restaurant and  
2 catering services;”

3       2. U.S. consumers associate “restaurant and catering services” with  
4 restaurants, in this case Potato Corner USA franchised restaurants;<sup>1</sup>

5       3. Cinco Group and LA Group entered into a partnership to create a  
6 “business of establishing, operating, managing, licensing and franchising ‘Potato  
7 Corner’ stores/outlets” (Trial Exhibit 1050) as the vehicle through which the Potato  
8 Corner brand would expand in the United States;<sup>2</sup>

9       4. Cinco, the foreign trademark holder and U.S. registrant, agreed to  
10 contribute to the partnership and granted both exclusive lifetime and trailing  
11 trademark rights essential and integral to the purpose of the partnership in PCJV  
12 (the LA Group’s consideration) (Trial Exhibit 1050 ¶¶ 1(a), 4(a)-(b) and Trial  
13 Exhibit 1051 ¶¶ 3.1, 9.2.1);

14       5. Cinco vested quality control obligations in (a) PCJV’s President to  
15 license the U.S. trademarks and franchise Potato Corner restaurants (Trial Exhibit  
16 1050 ¶¶ 3(l) (i-iii)), (b) PCJV’s executive officers to manage Potato Corner USA’s  
17 business and property (*id.* ¶ 3(f)), and (c) PCJV’s Management to approve  
18 franchisee agreements, including as disclosed in FDD (*id.* ¶ 3(e) (iv));

19       6. The vested lifetime rights and obligations, including branding rights and  
20 obligations, were not transferable by Cinco without LA Group’s prior written  
21 consent (Trial Exhibit 1050 ¶ 2(d); Trial Exhibit 1051 ¶ 3.3);

22  
23       1 “Potato Corner USA” originally was the coined name for PCJV’s LA Group (Trial  
24 Exhibit 1017); then PCJV used and affixed the name to Potato Corner restaurants in  
25 the United States, including registering [www.potatocornerusa.com](http://www.potatocornerusa.com) and a d/b/a  
Potato Corner USA, which is property owned by LA Group and PCJV.

26       2 While efforts were made to avoid reporting violations of California franchise law  
27 after DLA Piper notified Cinco of the need to create a U.S. franchisor and convert  
28 license agreements into franchisee agreements, DLA Piper eventually filed a Notice  
of Violation and the State of California’s Department of Business Oversight  
sanctioned PCJV (not Cinco) for opening up three Potato Corner outlets, including  
the first in Santa Anita, before PCJV had filed a FDD (Trial Exhibit 1257).

1       7. In reliance thereon, PCJV created the goodwill associated with Potato  
2 Corner in the United States, including creating an entirely new Potato Corner brand,  
3 starting from scratch to create an entirely new quick-service restaurant and business  
4 model for the U.S. brand, which it could franchise, including:

- 5       a. Designing entirely new Potato Corner restaurants for U.S. venues;
- 6       b. Creating entirely new Potato Corner USA restaurant training and  
7                    operation manuals; and
- 8       c. Designing and updating Potato Corner USA's menus, including  
9                    adding new food and beverage items then not available in Potato  
10                  Corner outlets in other countries;<sup>3</sup>

11       8. U.S. consumers associated Potato Corner in the United States with  
12 PCJV, to whom complaints, if any, were lodged; and

13       9. PCJV plainly held the goodwill of Potato Corner in the United States for  
14 over a decade, to which there was no dispute, until SPAVI took steps to  
15 manufacture disputes, change the *status quo*, and disrupt the market.

16       By claiming the benefits of without acquiring any interest in the franchise  
17 partnership and without assuming the corresponding burdens in 2022, SPAVI could  
18 not have obtained "the good will of the business in which the mark is used, or with  
19 that part of the good will of the business connected with the use of and symbolized  
20 by the mark." *Glow Indus., Inc.*, 273 F. Supp. 2d at 1107. It engaged in a naked  
21 assignment.<sup>4</sup>

22  
23  
24

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25       <sup>3</sup> Cinco did not know the U.S. market and landlord requirements; in other countries,  
26 Cinco used lesser quality food as well as different menu items and the restaurant  
design Cinco proposed was rejected as "ugly" by Westfield (Santa Anita).

27       <sup>4</sup> Testimony will also establish that Cinco Group was forewarned in or about 2016-  
28 2017 about engaging in a naked license if it were to assign their 60% interest in  
PCJV to the LA Group in exchange for a new license agreement it was proposing as  
a means to restructure the PCJV relationship.

1       **III. WAIVER**

2       **A. Waiver by Cinco (Inherited by SPAVI)**

3           From 2010 to 2022, Cinco (and its related entities/individuals) never  
4           demanded royalties (and literally waived them), never sought to terminate PCJV's  
5           license rights, and affirmatively approved (including under penalty of perjury)  
6           FDDs that stated that PCJV held a 50-year Trademark License Agreement. PCJV,  
7           itself, could not waive royalties or service fees promised to its partners.

8           In 2018, Cinco sued for control of PCJV rather than terminate an alleged "at-  
9           will" license, judicially admitting PCJV's long-term rights (and its own standing to  
10          sue for control of PCJV's business and property) in the state court action. Moreover,  
11          by sitting idle for more than ten years while PCJV operated and expanded the brand  
12          and franchise system (including never once claiming trade secret misappropriation),  
13          Cinco waived all rights, including any right to claim that the parties failed to fulfill  
14          any alleged ministerial obligation to execute (rather than just enter) a license  
15          agreement (there was never an obligation to execute a license agreement).

16          By approving, consenting to, and ratifying annual FDDs affirming a 50-year  
17          "Trademark License Agreement," Cinco waived any right to unilaterally terminate  
18          for its own self-interest PCJV's right to use the U.S. trademarks (as opposed to  
19          fulfilling its fiduciary and contractual obligation to grant Potato Corner USA license  
20          terms necessary to support its existing franchise system, if needed). In conspiring  
21          with SPAVI in the middle of state court litigation to deny and disavow in two courts  
22          the acquisition of the PCJV partnership's pre-existing trademark rights and Cinco's  
23          corresponding trademark obligations, including under the "Trademark License  
24          Agreement," Cinco, thereafter, knowingly assigned and transferred all of its rights  
25          and obligations to Koren-led entities in the 2024 settlement, and released and  
26          waived known and unknown claims. SPAVI inherited all of these waivers; an  
27          assignment does not revive waived rights.

## **B. Independent Waiver by SPAVI**

During 2021-22 diligence, SPAVI assured PCJV it would be bound by any settlement reached with Cinco, yet later repudiated that promise. To avoid PCJV USA Parties from going to court, SPAVI represented on February 10, 2022: “Although Cinco and its affiliates retain the right to negotiate this deal, as the Acquisition has not closed, upon closing, SPAVI would be bound by any agreements related to the licensing of Potato Corner intellectual property in the US.” Trial Exh. No. 1156. In that same document, SPAVI claimed it is the “assignee of all global licensing agreements (*including the assignment to SPAVI of all licensing agreements with PCJV*).”<sup>5</sup> *Id.*

For the years that followed, SPAVI allowed Cinco to negotiate a settlement with PCJV through its legal counsel, Mr. Murphy. In other words, SPAVI deputized Cinco to act as its agent and resolve the state court litigation over Potato Corner USA. As the agent of the real party in interest, Cinco not only settled the state court action but also signed the release and MIPA releasing any and all interests in PCJV and PCI Trading, and any and all rights “attached” to those interests, unencumbered, without the need for a license. Cinco (as deputized by SPAVI) also represented and warranted that the transaction would not result in the termination of any license (another waiver of any rights in SPAVI to terminate any license as an assignee of Cinco) including three days later in a conspiracy with SPAVI (trying to accomplish indirectly what Cinco’s fiduciary and contractual obligations under PCJV’s partnership documents prohibited Cinco from doing directly).

During that over two-year period, SPAVI took no steps to assume quality-control functions or seek relief from the state-court injunction that barred interference with PCJV's operations. SPAVI's delay in seeking to change the *status*

<sup>5</sup> Obviously, it, too, knew that licensing agreements, *i.e.*, meetings of the minds on the terms and conditions upon which the PCJV partnership's use of the U.S. trademarks would inure to Cinco's benefit, already existed.

1 *quo* from its announced deal with Cinco in December 2021 to the federal injunction  
2 proceedings, coupled with Cinco’s broad releases and SPAVI’s repeated denial of  
3 acquiring any PCJV interests or obligations, is a knowing relinquishment of  
4 contractual enforcement rights underlying its claims.

5 Also over this near three-year period, PCI Trading continued to purchase  
6 seasonings and supplies from a company whose ownership changed hands to  
7 SPAVI, including after the alleged termination. Not once did SPAVI (who denies  
8 and disavows assuming a fiduciary and contractual relationship with the PCJV USA  
9 Parties) require PCI Trading (or PCJV) to keep confidential any alleged trade  
10 secrets (whatever they may be) at issue in this case.

11 **C. Evidence Supporting Waiver**

12 **i. Trademarks**

13 The Trial Exhibits make clear that:

- 14 • There was no prior written consent by the LA Group to the assignment  
15 of any fiduciary or contractual “obligations” to anyone—a condition that  
16 remained required by both set of operating agreements the parties were  
17 operating under (JVA and LLC Agreement);
- 18 • There was no prior written consent by LA Group’s voting members of  
19 PCJV that Cinco could unilaterally assign voting rights from the Cinco  
20 Group to a “wholly-owned” subsidiary with no trademark rights or  
21 obligations (LLC Agreement ¶ 3.3);
- 22 • There was no intent to transfer any rights to a separate entity (JVA 4<sup>th</sup>  
23 Recital & First Amendment 4<sup>th</sup> Recital);
- 24 • There is no written assignment among the Trial Exhibits from Cinco to  
25 an entity called “Potato Corner International” (“PCI”) let alone to a  
26 “wholly-owned” subsidiary transferring even a 60% economic interest  
27 in PCJV; and

1           • There is no written novation of Cinco Group’s fiduciary obligations;  
2           rather, Cinco continued to approve FDDs, participate in Board meetings,  
3           amend documents, rely on the LLC Agreement (which specifies  
4           members being part of the “Cinco Group” and “LA Group”) and took  
5           other actions objectively manifesting that it was still bound by the JVA  
6           and LLC Agreements and its duties to the partners.

7           A neutral witness, Erlinda Bartolome, who was hired by and worked for years  
8           directly with *Cinco* and also interfaced with DLA Piper, as well as serving as  
9           PCJV’s Corporate Secretary (at Cinco’s request), will testify to the limited purpose  
10           and intent of the First Amendment (which she drafted) and will corroborate  
11           testimony of other witnesses. She will confirm that it was meant to only partially  
12           amend only the JVA as specifically reflected in the board meeting minutes. Trial  
13           Exh. No. 1052. Cinco always remained a partner and fiduciary and among the  
14           contracting “Parties” at all times. At best, the LLC Agreement enabled PCI to  
15           acquire an “economic interest” under Paragraph 8.1, but not to acquire voting rights  
16           or rights to information in PCJV. Trial Exh. No. 1051. All three are required in  
17           order to be a fully fledged “member” of an LLC. For these reasons, the LLC  
18           Agreement never was amended to add PCI as a fully fledged member. Nor is there  
19           evidence of any prior written consent to any transfer of obligations in the JVA (the  
20           First Amendment is not *prior* written consent; in fact, it continues to express the  
21           mutual intentions of the parties that no obligations could be assigned).

22           Moreover, under the JVA, Cinco knew that the LA Group owed a ministerial  
23           duty to execute further documents if required. If Cinco desired an “executed” rather  
24           than, simply, an “entered” license agreement, it asked and Koren delivered. But the  
25           issue of the “unsigned” Trademark, Copyright, and Know-How Agreement is a  
26           distraction. For over a decade, Cinco never claimed that a Trademark License  
27           Agreement did not exist. On the contrary, it was reported year after year in PCJV’s  
28           FDDs at its own behest that one existed. It is quite possible that somewhere within

1 Mr. Magsaysay's files there is a document called "Trademark License Agreement"  
2 that was signed or otherwise subscribed by him. The evidence shows that Cinco and  
3 DLA Piper were vested with complete control over memorializing the parties'  
4 existing agreements and that Cinco and DLA Piper helped PCJV pass stringent  
5 yearly audits and made under-oath representations in those FDDs.

6 It also is plausible that the parties agreed, adopted or ratified the JVA or LLC  
7 Agreement as the true, existing and ongoing right-to-use agreement, containing all  
8 the material terms for vested, non-transferable control rights and long-term,  
9 indefinite licensing rights and obligations subject to termination rights set forth in  
10 those documents, which are fully executed and supported by consideration. Those  
11 agreements also contain the consideration element (30% to Cinco Group for  
12 granting a license, and 30% to LA Group for contributing services).

13 If there truly is no vested partnership right to use and control the U.S.  
14 trademarks and no express or implied license agreement, then factually, two waivers  
15 flow from Cinco's knowing failure to enforce any right to obtain a license  
16 agreement. First, it waived any right to assert that the LA Group breached the JVA  
17 or LLC Agreement for allegedly failing to enter into the referenced license  
18 agreement. Second, it waived any right to terminate "at-will" PCJV's right to use  
19 and control the marks based on a demand it never made for over ten years.

20 Testimony at trial will demonstrate that no "at-will" right could exist absent a  
21 breach of the JVA and LLC Agreement—a claim not made, but settled and released:

- 22 • In promising to convert Cinco's initial unlawful license (to NKM) into  
23 long-term franchise rights, where Koren would also co-own and operate  
the U.S. franchisor, Cinco "vested" branding rights (at the U.S.  
franchisor level) in their joint venture as the "vehicle" through which  
Potato Corner would expand in the United States;
- 25 • Subsequent negotiations resulting in the LA Group securing long-term  
26 branding rights under a written joint venture agreement, where Cinco's  
consideration (not the LA Group's) included entry into a master license  
agreement, but for which PCJV had indefinite rights absent a super  
27 majority vote or further agreement by PCJV's partners, or owned  
common law rights based on the parties' conduct under *Sengoku*;

- 1     • Written rejection of at-will branding rights by Koren in 2009 and the LA  
2     Group in 2010 precluding any implied at-will termination right, which  
3     also would be contrary to fiduciary obligations and the implied covenant  
4     of good fair dealing under the joint venture agreement protecting the LA  
5     Group's benefit of the bargain;
- 6     • In response to a 10-year term inserted by DLA Piper in one of the draft  
7     JVA documents, the LA Group demanded, obtained and Magsaysay also  
8     desired "lifetime" branding rights in the joint venture, changing the  
9     termination provision to "indefinite" rights; later the parties agreed to  
10    enter a master license agreement with a 20-year term plus three 10-year  
11    options, offered by Cinco to satisfy their lawyers' concerns about  
12    indefinite rights in the master license agreement while also providing  
13    Cinco the right to transfer the license (under only the terms and  
14    conditions of the license agreement); and
- 15    • Course of performance, as documented in FDDs, emails, and board  
16    minutes, both waiving equal license and service fees to each group in  
17    favor of growth and to avoid regulatory scrutiny, and confirming the  
18    parties' understanding and agreements.

1     Whether by written or verbal agreement, course of performance, fiduciary  
2     obligations, the implied covenant of good faith and fair dealing, or detrimental  
3     reliance, the PCJV USA Parties had enforceable long-term trademark rights secured  
4     during contract negotiations and course of performance for the mutual benefit of the  
5     Cinco Group and LA Group. Cinco waived, including by inaction for a decade, the  
6     exercise of the ministerial duty clause to execute and deliver documents if needed,  
7     and any right to claim that PCJV only had an "at-will" implied license.

## 18            ii. Trade Secrets

19     SPAVI's initial burden was to "identify the trade secrets and carry the burden  
20     of showing they exist." *InteliClear, LLC v. ETC Global Holdings, Inc.*, 978 F.3d  
21     653, 658 (9<sup>th</sup> Cir. 2020). Trade secrets can only comprise "information, including a  
22     formula, pattern, compilation, program, device, method, technique, or process." Cal.  
23     Civ. Code § 3426.1(d). A flavor is an idea, not a protectable trade secret. *See*  
24     *InteliClear, LLC*, 978 F.3d at 658; *Silvaco Data Systems v. Intel Corp.*, 184 Cal.  
25     App. 4th 210, 220 (2010).

26     Moreover, SPAVI must prove that it "owns" the trade secrets sued upon—  
27     meaning that the plaintiff either has title to the alleged trade secrets or knowledge of  
28     allegedly sensitive know how and licensed it with a confidentiality obligation. *See*

1 *Sinclair v. Aquarius Electronics, Inc.*, 42 Cal.App.3d 216, 225-228 (1974) (trade  
2 secret licensing involves sharing sensitive, undisclosed information). SPAVI also  
3 cannot retroactively make secret that which has is already in the public domain,  
4 whether directly by Ferna or Newly Weds, themselves, publicly selling packaged  
5 seasonings into the market, or Cinco selling packaged seasonings or permitting  
6 others to sell packaged seasonings to generate revenue that would otherwise be lost  
7 to competitors selling the same or substantially the same flavors in the market.

8 In this case, there is no dispute that Cinco did not own any flavors. There also  
9 is no dispute that neither Ferna nor Cinco or its successor-in-interest ever shared any  
10 secret recipes or information about how to create the flavors. There also was never  
11 any trade secret license listed in the Trial Exhibits that obligated Cinco to keep  
12 secret seasoning packages Ferna has publicly sold since the 1990's. Rather,  
13 evidence at trial will show that Ferna, Cinco and others with permission from Cinco  
14 publicly sold seasoning packages, and Ferna's seasoning packages have been  
15 "knocked off" for years. They are all over the Internet not only by competitors, but  
16 also by Ferna and by alter egos of Ferna. Cinco, itself, retained another  
17 manufacturer, Newly Weds, to mimic the taste.

18 Having, itself, both publicly sold or authorized the sales of seasoning  
19 packages and knocked off Ferna's seasoning packages, Cinco waived any right to  
20 bring a trade secret claim against the PCJV USA Parties.<sup>6</sup> SPAVI, Cinco's  
21 successor-in-interest, has no right or ability to "put the horse back in the barn." An  
22 assignment does not revive rights already waived by the assignor. Besides, for over  
23 two years (including after this lawsuit was filed), SPAVI was fulfilling orders from  
24  
25

26 <sup>6</sup> Plenty of documents and testimony will also corroborate that the Cinco Group and  
27 LA Group were constantly strategizing about duplicating Ferna's flavors and  
sourcing them from the United States. In 2010, they met U.S.-based suppliers. In  
2017, Cinco authorized LA Group to duplicate the flavors in the United States.  
28 There is no trade secret; even if there is, any claimed right has been waived.

1 the PCJV USA Parties without any corresponding trade secret confidentiality  
2 agreement. It also waived all rights to any alleged trade secrets.  
3

4 DATED: August 18, 2025 **BLANK ROME LLP**  
5

6 By: /s/ Todd M. Malynn  
7 Todd M. Malynn  
8 Arash Beral  
9 Jamison T. Gilmore  
10 Attorneys for Defendants, Counterclaimants,  
11 and Third Party Plaintiffs PCJV USA, LLC,  
12 PCI TRADING LLC, POTATO CORNER,  
13 LA GROUP, LLC, GK CAPITAL GROUP,  
14 LLC, NKM CAPITAL GROUP, LLC and  
15 GUY KOREN, and Defendants J & K  
16 AMERICANA, LLC, J&K LAKEWOOD,  
17 LLC, J&K OAKRIDGE, LLC, J&K  
18 VALLEY FAIR, LLC, J & K ONTARIO,  
19 LLC, J&K PC TRUCKS, LLC, HLK  
20 MILPITAS, LLC, and GK CERRITOS, LLC  
21  
22  
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28

**CERTIFICATE OF SERVICE**

The undersigned certifies that on August 18, 2025, the foregoing document was electronically filed with the Clerk of the Court for the United States District Court, Central District of California, using the Court's Electronic Case Filing (ECF) system. I further certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I certify under penalty of perjury that the foregoing is true and correct.  
Executed on August 18, 2025.

By: /s/AJ Cruickshank